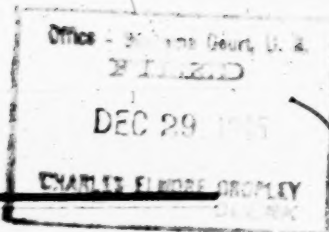


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Supreme Court of the United States

October Term, 1945

No. 484

HELEN C. POFF, as Executrix of the Last Will and
Testament of John B. Welshans, Deceased,

Petitioner,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONER

MORRIS A. WAINGER,
Counsel for Petitioner.

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vs.

THE PENNSYLVANIA RAILROAD COMPANY,

Respondent.

BRIEF FOR PETITIONER

The Opinions of the Courts Below

The opinion of the Circuit Court of Appeals is reported at 150 Fed. 2d 902 and appears in full at pages 14 to 17 of the Record.

The opinion of the District Court is reported at 57 Fed. Supp. 625 and appears in full at pages 8 to 10 of the Record.

Jurisdiction

This Court granted a writ of certiorari herein on November 13, 1945 (R. 19).

Statement of the Case

This is an action at law brought in the United States District Court for the Eastern District of New York by Helen C. Poff, as Executrix of the Last Will and Testament of John B. Welshans, Deceased, the petitioner herein, against The Pennsylvania Railroad Company, the respondent herein, under the Federal Employers' Liability Act (45 U. S. C., §§ 51-60) to recover damages for the death of the deceased, a railroad engineer, who was killed while engaged in interstate commerce under circumstances which respondent admitted on the trial constituted negligence chargeable to it (R. 6). The trial was before a jury which rendered a verdict for petitioner in the sum of \$8,500, on which judgment for \$8,575.63 was entered in the District Court (R. 10-11). An appeal from said judgment was taken by respondent to the United States Circuit Court of Appeals for the Second Circuit (R. 11-12), which reversed the judgment of the District Court and dismissed the complaint (R. 17, 18). The judgment of the Circuit Court of Appeals was entered herein on July 9, 1945 (R. 18). Petition for a writ of certiorari was filed in this Court on October 4, 1945, and said petition was granted on November 13, 1945 (R. 19).

Deceased left him surviving petitioner, his widowed first cousin, who was a member of his household and wholly dependent upon him for support; she had received her entire support from him for five and one-half years before his death (R. 6-7). Two sisters and a nephew, a son of a deceased brother, who were in no way dependent upon him, also survived the deceased (R. 6). No widow, children nor parents survived him (R. 6). Respondent does not contest the jury's finding that petitioner was dependent upon deceased (R. 7).

The sole question involved herein is whether the petitioner is entitled to recover under the provisions of Sec.

tion 1 of the Federal Employers' Liability Act (45 U. S. C., § 51) that in case of the death of an employee the carrier shall be liable

"to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee * * *."

The District Court held that since the petitioner was the nearest dependent kin of the deceased, she was entitled to recover under the Act (R. 8-10). *Poff v. Penna. R. R. Co.*, 57 Fed. Supp. 625.

The Circuit Court of Appeals decided that petitioner was not entitled to recover under this provision of the Act because nearer relatives survived the deceased, although they were in no way dependent upon him and although petitioner was the nearest surviving dependent relative (R. 14-17). *Poff v. Penna. R. R. Co.*, 150 Fed. 2d 902.

Specification of Errors

1. The Circuit Court of Appeals erred in holding that petitioner, deceased's first cousin, who was wholly dependent upon him for support, and who was his nearest dependent kin, was not entitled to recover damages for his death under Section 1 of the Federal Employers' Liability Act (45 U. S. C., § 51) because he was also survived by two sisters and a nephew, the son of a deceased brother, who were in no way dependent upon him and suffered no pecuniary loss by his death and were thereby disqualified as beneficiaries under the Act.

2. The Circuit Court of Appeals erred in reversing the judgment of the District Court and dismissing the complaint.

Summary of Argument

Petitioner, as deceased's nearest surviving dependent relative, is entitled to recover damages for his death under the Federal Employers' Liability Act, and the Circuit Court of Appeals erred in holding to the contrary and dismissing her complaint.

I

Since damages for death under the Federal Employers' Liability Act are recoverable only by relatives who were dependent upon deceased or suffered pecuniary loss by his death, the nearest surviving dependent relative is entitled to recover, and the survival of nearer non-dependent relatives is not a bar to such recovery.

II

Restriction of beneficiaries under the Act to the "next of kin" or nearest relatives existing at the time of death would subject such recovery to the varying provisions of State statutes of descent and distribution. This would be contrary to the intent of Congress as disclosed by its rejection of proposals to make such State statutes applicable.

III

The decision of the Circuit Court of Appeals is contrary to the requirement that the Act be construed liberally.

ARGUMENT

Petitioner, as deceased's nearest surviving dependent relative, is entitled to recover damages for his death under the Federal Employers' Liability Act, and the Circuit Court of Appeals erred in holding to the contrary and dismissing her complaint.

I

Since damages for death under the Federal Employers' Liability Act are recoverable only by relatives who were dependent upon deceased or suffered pecuniary loss by his death, the nearest surviving dependent relative is entitled to recover, and the survival of nearer non-dependent relatives is not a bar to such recovery.

The relevant provision of Section 1 of the Federal Employers' Liability Act, which is involved herein, provides that in the case of the death of an employee the common carrier by railroad shall be liable in damages to his personal representative

"for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee"
(45 U. S. C., § 51).

The deceased employee in the case at bar left him surviving no widow, children or parents. He left him surviving, as his nearest relatives, two sisters and a nephew, the son of a deceased brother, who were in no way dependent upon him for support, and the petitioner, his widowed first cousin, next in degree among his surviving relatives, who was wholly dependent upon him.

The two sisters and nephew were not qualified beneficiaries under the Act because they were in no way dependent upon the deceased. *Gulf, C. & S. F. Ry. Co. v.*

McGinnis, 228 U. S. 173; *Michigan Central R. Co. v. Free-land*, 227 U. S. 59. It is well settled by the cases last cited that recovery in an action for damages for death under the Federal Employers' Liability Act may be had for the benefit of the relatives named in the Act only if they were dependent upon the employee or sustained pecuniary loss by his death. In the case of a widow and minor children, there may be a presumption from the relationship that such dependence exists or that pecuniary loss has been sustained.

The Circuit Court of Appeals held that the mere existence of the nearer relatives, even though they could not be beneficiaries under the Act, barred recovery by the petitioner, who was the nearest dependent relative, and, as petitioner claims, the next of kin dependent or next of dependent kin. The ruling of the Circuit Court of Appeals, in accordance with the contention and argument of the respondent, was to the effect that the Pennsylvania law of descent and distribution controls. Under that law the sisters and nephew would take decedent's estate, if he had died intestate, to the exclusion of the first cousin.

Petitioner urges that these provisions of the Pennsylvania law are not controlling. Under that law distribution is not based on dependence, whereas the right to recover herein is governed by the Federal Employers' Liability Act, which makes dependence the qualification for beneficiaries thereunder, and not by any State statute of descent and distribution. The purpose of the Federal Act is to provide for the dependent relatives or kin of a deceased employee who have lost their support or suffered pecuniary loss by reason of his death.

The purpose of the Act, to provide for the dependent relatives of a deceased railroad worker, would be defeated in every case in which there is a dependent relative and a non-dependent closer relative also survives if the survival of the latter were to constitute a bar to recovery by the dependent relative. The purpose of the Act can be effec-

tuated only by authorizing recovery for the benefit of the nearest relative who qualifies by reason of dependence or pecuniary loss and disregarding any nearer relative who does not so qualify.

It has been held that under the Federal Employers' Liability Act recovery may be had by a *dependent* relative, although there were also surviving nearer relatives who were not dependent upon the employee ~~or did~~ not sustain any pecuniary loss in his death. The situation is then treated as though no nearer relative survived.

Lytle v. Southern Ry. Co., 152 So. Car. 161; 171 So. Car. 221; *certiorari denied*, 290 U. S. 645.

Notti v. Great Northern Ry. Co., 110 Mont. 464.

Roberts, Federal Liabilities of Carriers, 2d Ed., Vol. 2, § 882, pp. 1729-1731.

In *Lytle v. Southern Ry. Co.*, *supra*, it was held that a widow, who had left the deceased and lived in adultery, was not qualified as a beneficiary under the Federal Employers' Liability Act, presumably because she had not suffered pecuniary loss by his death, and the mother of the deceased, who was in a deferred class under the Act and would not have been entitled to recover if the widow were entitled, was allowed to recover. The Court treated the unfaithful wife as though she was not the widow of the deceased. *Certiorari* was denied by this Court.

In *Notti v. Great Northern Ry. Co.*, *supra*, it was held by the Supreme Court of Montana that a mother who was dependent upon the deceased was entitled to recover under the Federal Employers' Liability Act despite the survival of two adult sons of the deceased who were not dependent upon him. There, as here, the railroad company contended that since there were surviving nearer relatives, who were in a preferred class under the Act the mother could not recover. Basing its decision upon the decisions of this

Court that a beneficiary under the Act can recover only if he sustained pecuniary loss or was dependent, and citing *Roberts, Federal Liabilities of Carriers, supra*, the Court held that, in the absence of a qualified beneficiary among the surviving nearer relatives, they will be disregarded, and the cause of action will lie for the benefit of the more distant relative who qualifies by reason of his dependence or pecuniary loss.

Roberts (Federal Liabilities of Carriers, 2d Ed., Vol. 2, § 882, pp. 1729-1931) states that as a necessary result of this Court's decisions that only relatives suffering pecuniary loss may recover,

"no right of action is created for the benefit of any of the enumerated classes of beneficiaries unless there lives, at the time of the employee's death, a dependent relative of that class. In the absence of such a qualified taker on the contrary, that class is to be disregarded, and a cause of action will arise for the benefit of, and will vest in, the class next in rank represented by a qualified beneficiary."

The same principle has been applied in death actions under State statutes, in which recovery is based on dependence or pecuniary loss. In such cases it has been held that persons in a deferred class may take if those surviving in the preferred class suffered no pecuniary loss.

Missouri, K. & T. Ry. Co. v. Canada, 130 Okla. 171.
Indianapolis & Cin. Traction Co. v. Thompson, 81
 Ind. App. 498.
 25 *Corpus Juris Secundum*, p. 1112.

In *Missouri, K. & T. Ry. Co. v. Canada, supra*, the action was under the Oklahoma death act by the husband to recover damages for the death of his wife, who left her surviving, in addition to the husband, "three adult married and independent children". The Oklahoma statute placed

the surviving husband in a deferred class in comparison with the surviving children, who would be exclusively entitled to the damages if they qualified as beneficiaries. The Court found that the adult children could not qualify as beneficiaries because they sustained no pecuniary loss and held that they "did not exist then in a legal sense" (130 Okla. at 173). Recovery was allowed by the husband, who was held to stand "in no worse condition than if the decedent had left no children surviving her" (p. 173).

In *Indianapolis & Cin. Traction Co. v. Thompson, supra*, deceased was survived by her husband and parents. The husband had suffered no pecuniary loss because he had lived apart from the deceased. Had he qualified as beneficiary the parents would not have been entitled to recover. Since he suffered no pecuniary loss it was held that the parents, who were in a deferred class in relation to the husband, were entitled to recover.

Pries v. Ashland Light & Co., 143 Wis. 606, illustrates a similar principle. Under the Wisconsin death statute non-resident aliens were held not entitled to recover. In the case cited decedent left him surviving a father and mother, who were non-resident aliens, and two sisters, who were not aliens. If the parents could have qualified as beneficiaries the sisters would have been excluded from recovery. The Court held that the survival of the parents without the right to recover did not deprive the sisters of that right.

In the case at bar the Circuit Court of Appeals based its rejection of the principle followed in the cases and by the authorities we have cited upon the decisions of this Court (*New Orleans & N. E. R. Co. v. Harris*, 247 U. S. 367; *Taylor v. Taylor*, 232 U. S. 363; *St. Louis & S. F. R. Co. v. Seale*, 229 U. S. 156, 162) which held that where a qualified beneficiary survived and became vested with the right to recover, a dependent relative in a deferred class

could not recover although the nearer relative was entitled to recover only a small amount by way of damages (R. 16-17). However, these decisions of this Court proceed on the principle that when the cause of action has vested in a *qualified* beneficiary capable of taking in accordance with the provision of the statute the more remote relative cannot recover. These cases do not impair the principle urged by petitioner. In each of these cases the more distant relative was excluded because a nearer *dependent* relative or one who suffered pecuniary loss survived, even though the actual damage sustained by latter was not large. The survival of a *dependent* relative vests the cause of action in him *exclusively* under the Act, irrespective of the amount of damages he is entitled to recover. The fact that such damages are small does not change the principle that when a cause of action has once vested in one dependent relative, none remains in favor of another who is more remotely related to the deceased. As this Court said in *Chicago, B. & Q. R. Co. v. Wells-Dickey Trust Co.*, 275 U. S. 161 at 163:

"The cause of action accrues at the death. *Reading Co. v. Koons*, 271 U. S. 58. When it accrues there is an immediate, final and absolute vesting; and the vesting is in that one of several possible beneficiaries who, according to the express provision of the statute, is declared entitled to be compensated."

That is not the situation in the case at bar. Here there was no vesting of any cause of action, with damages large or small, in any dependent relative more closely related to the deceased than the petitioner. The case at bar is, therefore, broadly and decisively distinguishable from these cases.

The fact that the statute is not sufficiently broad to permit recovery by a dependent relative when a nearer qualified relative is entitled to recover only a small amount seems to petitioner to constitute no justification for extend-

ing the injustice by holding that where the nearer relative gets and can get nothing, and when no cause of action has vested in him under the Act, the next and totally dependent kin must also be excluded and the entire cause of action fail.

Petitioner's right to recover under the Act would not be disputed if the deceased had left him surviving no sister and nephew. The authorities we have cited hold that petitioner's right to recover as a dependent relative is unaffected by the survival of closer relatives who are not entitled to recover because they were not dependent upon the deceased and suffered no pecuniary loss by his death. These authorities hold that since only a dependent relative may recover under the Act, a surviving relative who is not dependent is disregarded, as though he had not survived.

The principle thus enunciated is in accord with the terms of the statute and the obvious purpose for which it was enacted: to provide for the nearest relatives of a deceased railroad employee who suffer pecuniary loss or loss of support by reason of the death of the employee through the negligence of the railroad employer while both are engaged in interstate commerce. The basis upon which a relative qualifies as beneficiary is dependence or pecuniary loss, whether the next of kin be spouse, children, parents or others farther removed. The nearest dependent relative has the right to recover.

The interpretation of the Act by the Circuit Court of Appeals would result in the complete failure to carry out the beneficent purposes of the law in the case at bar, since it would result in the forfeiture or lapse of the cause of action, based on conceded negligence, for the benefit of a relative wholly dependent upon the deceased when there are no closer relatives who were dependent upon him or suffered pecuniary loss by his death. Petitioner respectfully submits that such a result should not be permitted unless the statute, in specific and indisputable terms, commands it.

Restriction of beneficiaries under the Act to the "next of kin", or nearest relatives existing at the time of death, would subject recovery to the varying provisions of State statutes of descent and distribution. This would be contrary to the intent of Congress as disclosed by its rejection of proposals to make such State statutes applicable.

The Circuit Court of Appeals has held that recovery under the Act is limited to the next of kin of a deceased worker who are in "existence" at the time of decedent's death (R. 17), that is, to his nearest surviving relatives, and if none of these is dependent upon deceased, there can be no recovery for a dependent relative or kin next in degree of kinship. This would limit recovery to those who would inherit or take the intestate estate of the deceased under State law.

Petitioner urges that not only the terms of the statute and its purpose, but also the proceedings in Congress during its consideration, indicate that such limitation is contrary to the intent of Congress. The adoption by Congress of specially designated beneficiaries and the rejection of all proposals that beneficiaries should be the persons who are entitled to recover in similar actions under State law, or who are entitled to share in a decedent's estate under State laws of descent and distribution, is persuasive indication that Congress intended that recovery be not limited according to State statutes.

The distinction must be noted between the provision of the Federal Act as to the identity and qualifications of beneficiaries, and the resort to State law to ascertain whether a person is "next of kin" or "kin" at all of the deceased. In the case at bar it is not necessary to determine who is "next of kin", in the sense of who is the nearest relative entitled under the Pennsylvania statute of descent

and distribution. Petitioner concedes that there are nearer relatives who would constitute "next of kin" under the Pennsylvania statute. However, petitioner urges that under the Act it is necessary to ascertain who is the nearest dependent relative. It is conceded that petitioner is the nearest dependent relative. Resort is had to State law only when it is necessary to determine whether the person claiming is "kin" at all, or who is closer of kin as between two or more relatives. As pointed out by the District Court (R. 9), this occurs, for example, in cases where the question to be determined is whether an illegitimate child is "kin" or "next of kin" of his parents or of his parents' legitimate children. That was the nature of the question which had to be determined in *Seaboard Air Line Ry. Co. v. Kenney*, 240 U. S. 489. It was held in that case that such a question is governed by State law. Petitioner urges that that does not mean that State law as to who is "kin" or "next of kin", or who is the nearest relative entitled to take a deceased's intestate estate, controls her right to recovery here. For here there is no question that the person claiming is "kin" and that she is nearest dependent kin or next of dependent kin. Petitioner urges that it follows that she is "next of kin dependent", as provided in the Act.

The intent of Congress to provide only for dependent relatives and for the nearest dependent relative, without limitation to the nearest surviving relative, is indicated by the action taken during consideration of the bills which became the present Federal Employers' Liability Act: The Act of June 11, 1906, 34 Stat. 232; the First Employers' Liability Act (which was held unconstitutional because it embraced intrastate employment, *First Employers' Liability Cases*, 207 U. S. 463); the Act of April 22, 1908, 35 Stat. 65, the original of the present Act; and the Act of April 5, 1910, 36 Stat. 291, which added Section 9 to the Act, providing for the survival of the cause of action of the injured employee for the benefit of the

same beneficiaries enumerated in Section 1. Congress rejected provisions in the original bills which would have limited recovery to "heirs at law",¹ and amendments which would have provided that the recovery should be "distributed as unbequeathed assets",² "in the order fixed by law in such state",³ "to be distributed under the law of the State or Territory in which such right of action accrues".⁴ The language by which the beneficiaries were designated in Section 1 of the Act of 1908 is substantially the same as in the Act of 1906 and was exactly the same as in the Act of 1910.⁵

¹ H. R. 239, 59th Cong. 1st Sess., which became the 1906 Act, provided that recovery should be for the "heirs at law" of the deceased. The House Committee on Interstate and Foreign Commerce substituted "for the benefit of his widow and children, if any, if none, then for his next of kin dependent upon him" (House Report No. 2335, 59th Cong. 1st Sess., Cong. Rec., vol. 40, pt. 5, p. 4601). In the Senate, S. 156 and S. 1657 likewise provided for "heirs at law" (Cong. Rec., 59th Cong. 1st Sess., vol. 40, pt. 2, p. 1747), but when H. R. 239, as amended, was passed by the House, the Senate Interstate Commerce Committee reported that bill instead of the Senate bills (id., vol. 40, pt. 8, p. 7075, and Senate Report No. 3639, 59th Cong. 1st Sess.). The provision for "heirs at law" was thus specifically rejected by both Houses of Congress in favor of the present provision of the Act.

H. R. 20310, 60th Cong. 1st Sess., which became the 1908 Act, with the present provisions of Section 1 closely similar to the provisions of the Act of 1906, was passed after submission of House Report No. 1386, 60th Cong. 1st Sess., which contained summaries of the state laws on death by wrongful act with their varying provisions for beneficiaries and distribution of the recovery. The present provisions of Section 1 were adopted to avoid these varying state provisions, which were brought to the attention of Congress by this Report.

² Debates on H. R. 239, Cong. Record, 59th Cong. 1st Sess., vol. 40, pt. 5, p. 4601.

³ Debates on H. R. 17263, Cong. Record, 61st Cong. 2nd Sess., vol. 45, pt. 4, pp. 4045-4049, 4093-4097, 4122, 4123, 4124.

⁴ id., pp. 4048, 4123, 4124.

⁵ Act of June 11, 1906: "or in case of his death to his personal representatives for the benefit of his widow and children, if any; if none, then for his parents; if none, then for his next of kin dependent upon him" (34 Stat. 232).

Act of April 22, 1908: "or in case of the death of such employee, to his personal representatives, for the benefit of the surviving widow.

The Senate debate on the proposed amendments to make State statutes of descent and distribution applicable to the recovery of damages under Section 9 of the Act, which resulted in the retention of the present language, clearly indicates that it was intended to make dependence the determining factor in the right to recovery and to reject any limitation of State law which might result in recovery on a different basis, and, as we have stated above, that the intent of Congress was to provide for those relatives who have been deprived of support by the death of the employee.⁶

or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee * * * (45 U. S. C., § 51).

Act of April 5, 1910: "to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee, and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, * * * (45 U. S. C., § 59)."

⁶ Senator Sutherland (later Mr. Justice Sutherland of this Court) pointed out in opposing the amendments and supporting the present language of the Act:

"If the amendment is adopted the result may be that the action will survive for the benefit of some collateral heir or heirs who are in no manner dependent upon the deceased, and that some heir who is dependent upon the deceased will not be able to share in the recovery. * * *

The theory upon which all these laws of survivorship are drawn is that the person to whom the right of action is given is deprived of something; that he has been injured by the death. It is not like the case of distribution of an estate, which must go to the heirs, if there are any. We are conferring a right of action upon the survivors of the deceased because, by the death of the deceased, they have been deprived of something; in other words, the deceased has been contributing to the support of somebody—to the support of his widow, his children, or his parents. That is the theory upon which survival statutes are drawn. * * *

* * * The law which gives the right of survival of an action for the death of a person is upon the theory that the person to whom the right of action is given has been injured, has been deprived of support. Now this law confines it to the person

° It is, of course, true that the rejection of the proposed amendments and the insistence upon the present language of the statute were also motivated by the desire of Congress to make preferred provision for the widow, husband, children and parents, which some State statutes might not do. However, it is equally true that Congress, by rejecting these amendments and insisting on the language adopted, intended to avoid the effect of State statutes of descent and distribution which would have permitted recovery of damages on behalf of heirs or next of kin who were not dependent and which would have prevented recovery by a person who, in Senator Sutherland's words, "has been deprived of support", and to whose support "the deceased has been contributing". Congress intended, as Senator Piles stated, "that the cause of action survive for the benefit of the widow and children and those next dependent".

The decision of the Circuit Court of Appeals, which confines the recovery to the "next of kin" who would take

who is dependent upon the deceased." (Cong. Record, 61st Cong. 2nd Sess., vol. 45, pt. 4, p. 4047.)

"* * * the theory of the law is that the railroad company shall, so far as possible, recompense the persons who have been dependent upon him for his loss" (id., p. 4094).

Senator Piles, referring to the same proposed amendments and supporting the present language of the Act, said:

"I shall therefore insist that the cause of action survive for the benefit of the widow and children and those next dependent." (Cong. Record, 61st Cong. 2nd Sess., vol. 45, pt. 4, p. 4049.)

Senator Brown:

"This statute is for the benefit of those who are dependent on the injured employee. It is for the benefit of those who depend upon his labor for their sustenance."

"Statutes of this kind * * * are based upon the theory that care should be taken of those who are dependent upon the injured employee. *The dependency element in the statute is the gist of the statute; it is the purpose of the statute; * * **" (Cong. Record, 61st Cong. 2nd Sess., vol. 45, pt. 4, p. 4094.)

under the Pennsylvania statute of descent and distribution, prevents recovery in the case at bar by the person who "has been deprived of support" and to whose support "the deceased has been contributing" and by the person "next dependent".

It would seem that the insistence of Congress that State statutes of descent and distribution should not govern the distribution of the recovery in actions for death under the Federal Employers' Liability Act, in many of which dependence is not a requirement, indicates that Congress intended that dependence should be the controlling factor in qualifying a beneficiary,—certainly for those farther removed than the relatives specifically enumerated,—and that it did not intend, as some State statutes do, to allow recovery for the benefit of relatives who were not dependent. And since dependence was the controlling factor, it is submitted that it was not intended to limit recovery only to those entitled to share under the State law, the applicability of which was repeatedly rejected. The effect of the decision of the Circuit Court of Appeals in the case at bar would limit the right to recovery to the distributees under the State law, a limitation which Congress expressly rejected when it refused to adopt proposals to make State statutes of descent and distribution applicable.

The rejection by Congress of specific proposals contained in a bill is "significant". *Penna. R. Co. v. International Coal Mining Co.*, 230 U. S. 184, 198. The legislative history of a bill may be considered "in determining the meaning to be ascribed to an Act of Congress." *United States v. Dickerson*, 310 U. S. 554, 561-562. See also *United States v. American Trucking Associations*, 310 U. S. 534, 543-549; *Wright v. Vinton Branch*, 300 U. S. 440, 463-464.

III

The decision of the Circuit Court of Appeals is contrary to the requirement that the Act be construed liberally.

This Court has held that the Federal Employers' Liability Act "is to be construed liberally to fulfill the purpose for which it was enacted."

Jamison v. Encarnación, 281 U. S. 635, 640.

"The Federal Employers' Liability Act was designed to be applied liberally for the protection of railroad and other employees."

Lukon v. Penna. R. Co., 131 Fed. 2d 327, 329 (C. C. A. 3, 1942).

The liberal objectives of the Act are to be attained by its interpretation in accordance with the principles for which petitioner contends. The interpretation of the Circuit Court of Appeals is a narrow and not a liberal construction of the Act.

In enacting the Federal Employers' Liability Act it was the intent of Congress to provide for dependent relatives of railroad employees killed while engaged in interstate commerce. Under the liberal construction which is to be given to the Act, no dependent relative should be excluded, unless the language of the statute cannot reasonably be interpreted to include him. Under the rule enunciated by the Circuit Court of Appeals there can be no recovery in this case, in which liability is admitted and the proof is uncontradicted that the plaintiff was the *nearest dependent relative* and suffered very substantial pecuniary loss by reason of decedent's death. The support which she lost is as great as if she were the dependent widow, mother or sister of the deceased. The denial of recovery for this very substantial loss should not be imposed unless the statute expressly commands it. Petitioner urges that the language of the statute, its interpretation by other courts,

and the principles which govern the qualification of beneficiaries under similar laws, support plaintiff's right to recover herein.

CONCLUSION

It is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed and the judgment of the District Court should be affirmed.

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